

Differing Professional Opinions

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Differencing Professional Opinions (DPO)

Jim McConnell

Office of Safety, NNSA

Mr. McConnell is the Director of the Office of Safety within NNSA Defense Programs. In this role Mr. McConnell provides direct management support to senior leaders in Defense Programs for all nuclear safety and non-nuclear safety functions and issues. The scope of safety functions includes executing the NNSA self-regulatory requirements for nuclear safety and worker safety within Defense Programs.

As the Chief of Defense Nuclear Safety in the National Nuclear Security Administration (NNSA), Mr. McConnell was responsible for the development and implementation of NNSA-wide safety programs. His role was to increase corporate focus on nuclear safety and to coordinate safety issues at the NNSA site offices and headquarters. He reported directly to the NNSA administrator and advised NNSA on its interactions with the DOE, DNFSB, and other federal, state, and local agencies on matters relating to nuclear safety.

Mr. McConnell has spent a majority of his career in the oversight of nuclear safety. Spending 12 years at the DNFSB, he most recently was deputy technical director. In that position, he directed the board's technical staff and provided overall strategic planning to achieve the board's technical safety oversight mission. In this capacity, Mr. McConnell also served on the INPO Advisory Panel for Nuclear Safety Culture. During his tenure at DNFSB, he served as a group leader of the Nuclear Weapons Program, a site representative at the Pantex Plant, program manager for the Y-12 National Security Complex at Oak Ridge and a technical specialist. A former U.S. Navy officer, he served on the USS Houston and was an instructor at the SIC Nuclear Prototype Training Unit in Windsor, Connecticut.

He holds a bachelor's degree in electrical engineering from the U.S. Naval Academy and masters' degrees from the Catholic University of America and George Washington University.

Carol Sohn

Office of Science

Ms. Sohn has extensive background in nuclear safety analysis and nuclear materials processing. Ms Sohn obtained her BS in Chemical Engineering from Purdue University. She also completed her Masters of Science in Management from the Purdue Krannert School. She began her career at Los Alamos National Laboratory working in plutonium processing at Technical Area 55 (TA-55) including extensive glovebox experience, economic discard limit evaluation, nuclear materials management and modeling. She became a *Group Leader* for NMT-7 in charge of



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waste management, nuclear materials management, vault operations and shipping/transportation at TA-55.

In 1995 she became a DOE employee with the Richland Operations office, including serving as a *Division Director* overseeing a wide variety of topics including the authorization basis, systems engineering, characterization and environmental compliance. In 1999, Ms. Sohn transferred to the DOE-Oakland Operations office as their *Senior Nuclear Safety Advisor* for oversight of the nuclear facilities at the Livermore Site including safety analysis review (in excess of 150 actions), operational awareness, natural phenomenon, safety evaluation report preparation, authorization basis establishment and maintenance. She also served as the *Acting Assistant Manager for Technical Services* which supervises the oversight of most of the safety disciplines (occupational safety, industrial hygiene, biological safety, radiation protection, work planning/work control, quality assurance, etc.) for LLNL facilities.

Ms. Sohn transferred to Pacific Northwest National Laboratories in 2006 and helped revise the Preliminary Hazards Analysis for the Capabilities Replacement Laboratory. Following this task she served on assignment to the Office of Science as their Senior Nuclear Safety Advisor.

In November 2007, she was hired by DOE as the Senior Nuclear Safety Advisor for the Office of Science and has been participated on or reviewed safety basis actions, readiness activities and nuclear safety directives initiatives.



Differing Professional Opinions

James McConnell
Carol Sohn
October 2009



Presentation Overview

- Differing Professional Opinions (DPO) process for nuclear safety
- Lessons learned from Challenger/Columbia accident relative to differing professional opinions
- Evolution of the Employee Concerns Program (ECP)
- Attributes of a good ECP Manager; what attributes have you found work well?
- What is a whistleblower?
- Attributes of a whistleblower
- Senior manager techniques to minimize DPOs, employee concerns and whistleblower cases and promote informal resolution
- DPO/employee concern/whistleblower scenario(s) for decision makers
- Questions/discussions

Learning Objectives



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- Describe the differing professional opinions process for issues involving nuclear safety
- Identify the benefits of the Differing Professional Opinions process
- Identify the benefits of the Employee Concerns process
- Define what is a whistleblower
- Demonstrate techniques to mitigate employees concerns/whistleblower concerns for a specific scenario

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Differing Professional Opinions Process for Nuclear Safety



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- **DOE P 442.1 Differing Professional Opinions on Technical Issues**
 - Establishes the Differing Professional Opinion (**DPO**) policy
 - Ensures that managers encourage employees to freely communicate ES&H concerns and **DPOs**;
 - Ensures that employees feel free to raise issues without fear of retaliation or reprisals;
 - Ensure that issues related to ES&H are raised and addressed in a timely manner and that activities that might result in an undue risk are curtailed or suspended as appropriate under the proper authority; and
 - Supplements the Department of Energy (DOE) Employee Concerns Program mandated by providing a specific process for assessing and addressing technical issues related to ES&H.

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Differing Professional Opinions Process for Nuclear Safety (Cont.)



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DOE M 442.1-1 Differing Professional Opinions Manual for Technical Issues Involving Environment, Safety, and Health

- Establishes a Department of Energy (DOE) Differing Professional Opinion (**DPO**) process
- Not intended to circumvent other avenues for resolving technical disagreements but rather to supplement existing processes.
- Process supplements the DOE Employee Concerns Program established in DOE O 442.1A, Department of Energy Employee Concerns Program, by providing a specific process for assessing and addressing technical issues related to ES&H.

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Differing Professional Opinions Process for Nuclear Safety (Cont.)



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Responsibilities

- CTA (nuclear safety), Under Secretary (non-nuclear safety)
 - Within 10 working days of acceptance of the **DPO**, assign appropriate senior manager to be responsible for the Final Decision on a **DPO**. Where practicable, the individual assigned responsibility for the Final Decision should be at a level above or independent from the manager who made the contested decision.
 - Approve any extensions of the review period for **DPOs** beyond the initial 30 calendar day extension.
 - Make Final decisions on any appeals to **DPO**.
 - Stop or curtail work as necessary to ensure that a facility or activity is in a safe condition until **DPO** issues have been resolved.
 - Provide annual notice to all employees of the availability of the process and encourage its use where appropriate.

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Differing Professional Opinions Process for Nuclear Safety (Cont.)



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- **Chief, Health, Safety and Security Officer, Office of Health, Safety and Security**

- Assigns an HS DPO Manager for offices other than NNSA.
- Maintains the **DPO** Policy and Manual.
- Performs a sample review of **DPOs** biennially from the list provided by the DPO Managers.
- From the review, assesses the success of the **DPO** Process and the follow-up actions.
- Provides to the Deputy Secretary and each of the Under Secretaries a report on the findings of the assessment, including any pertinent recommendations to address findings or deficiencies.

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Differing Professional Opinions Process for Nuclear Safety (Cont.)



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- **Secretarial Officer, Deputy Administrator, CDNS, CNS, FOM or Other Senior Manager Assigned Responsibility**

- Within 10 working days of being assigned a **DPO**, appoints an ad hoc panel of independent experts to review the **DPO** issue and provide recommendations and assigns the chair for the panel.
- Provides technical assistance and/or support to the ad hoc panels, when needed.
- Reviews reports from ad hoc panels.
- Makes and documents the Final Decision within 10 working days of receiving an ad hoc panel report, including the appropriate actions to take on assigned **DPOs** and the bases for the Final Decision.
- Sends copies of the Final Decision to submitter, the submitter's management, the appropriate DPO Manager (or both DPO Managers), ad hoc panel members, and any individuals or organizations tasked with follow-up actions or implementation.

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Differing Professional Opinions Process for Nuclear Safety (Cont.)



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- **Secretarial Officer, Deputy Administrator, CDNS, CNS, FOM or Other Senior Manager Assigned Responsibility (Cont.)**

- Approves extensions to review periods for up to 30 calendar days and requests additional extensions
- Maintains records on **DPOs** until decisions have been documented then sends records to the appropriate DPOM (or both DPOMs) for record keeping and followup.
- Meets with employees who are not satisfied with **DPO** decisions within 10 working days of the request to meet, and attempts to resolve issues before the Final Decision is appealed.
- Where authorized, stops or curtails work as necessary to ensure that facilities and/or activities are in a safe condition until **DPO** issues have been resolved; where not authorized, informs the appropriate management level that work may need to be stopped or curtailed.
- Notifies contracting officers of contracts affected by the requirements of this directive that the CRD will be included in the affected contracts.

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Differing Professional Opinions Process for Nuclear Safety (Cont.)



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- **All DOE Managers**

- Encourage employees to engage in open, frank, and unrestricted professional discussions across organizational boundaries on technical issues related to ES&H, unless the disclosure is specifically prohibited by law.
- Ensure that the views of all persons involved in the process are respected.
- Protect employees from retaliation in any form for reporting **DPOs**.
- Report to the appropriate DPOM when requested on the status of assigned implementation actions resulting from the **DPO** resolution and on the closure of these implementation actions.

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Lessons Learned from Challenger/Columbia Accident

- Well-intentioned people and high-risk organizations can become desensitized to deviations from standards.
- Past successes may be the first step toward future failure.
- Organizations, like people, must always be learning, especially from past mistakes.
- Poor organizational structure can be just as dangerous to a system as technical, logistical, or operational factors.
- Leadership training and system safety training are wise investments in an organization's current and future health.



Lessons Learned from Challenger/Columbia Accident

- Leaders must ensure internal and external influences do not result in unsound program decisions.
- **Leaders must demand minority opinions and healthy pessimism.**
- Stick to the basics.
- High-reliability organization safety programs cannot remain silent or on the sidelines – must be visible, critical, empowered, and fully engaged.
- Safety efforts must focus on preventing versus solving mishaps.



Evolution of the Employee Concerns Program

- Whistleblower Protection Act (1989)
- DOE Order 5480.29 – Employee Concerns management system (1993)
- Alternative Dispute resolution (1996)
- Ombudsman program 1 CFR 305 (Use of Ombudsmen by Federal Agencies)
- Evolution of 10CFR708 (1999 and 2000) - DOE Employee Concerns Program
- DOE Order 442.1 (1999)
- DOE Order 442.1A (2001)



Attributes of a good ECP Manager

- Patience
- Good listener
- Knowledge about people and the Department
- Knowledge of “triage mechanisms” and categorization
- Solution orientation

Selection of a good ECP manager will
save you significant time in the long term



What is a whistleblower?

- Any person who makes a disclosure about improper conduct by public bodies and public officers under the Whistleblowers Protection Act 2001
- Person filing complaint of discrimination or retaliation will be required to show engagement in a protected activity, employer knew about the activity, employer subjected him/her to adverse employment action and protected activity contributed to the adverse action

Protected activity—activities such as raising concerns or otherwise making disclosures protected under law, regulations or legal precedent of information related to DOE operations, which the individual reasonably and in good faith believes is evidence of unsafe, unlawful, fraudulent or wasteful practices



Attributes of a Whistleblower

- Uncomfortable in workplace
- Focuses heavily on either wide breadth or a particular issue
- Venting with other staff
- For the most part individuals have good intentions—concerns with safety, etc. and take issues very personally and to heart

Techniques to Minimize DPOs, Employee Concerns, Whistleblower Cases and Promote Informal Resolution



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- Be aware of what is going on in your various resolution programs/processes
- Work issues at the lowest level
- Be open and take some personal involvement
- Have a strong ECP manager
- Don't let problems linger
- Be able to screen the big issues versus insignificant ones

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DPO/Employee Concern/Whistleblower Scenario(s)



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Base Scenario

- Hazard Category 2 nuclear facility determined to be non-compliant with 10CFR830, subpart B—safety basis was never developed but radiological inventory exceeds Hazard Category 2 thresholds
- Facility is a sets of hot cells with inventory stored above and below grade; most source term is below ground in pits; currently operating in surveillance and maintenance mode; facility has been in this state for approximately 20 years
- Operability of some key safety systems is questionable—no fire suppression in hot cells; limited fire detection in hot cells; fire detection for areas outside of hot cells is operable; no measurements on differential pressure for ventilation either in the hot cell or facility
- Development, approval and implementation of compliant safety basis will take approximately one to two years; Contractor establishes compensatory measures at the facility level with DOE approval
- Contractor has opportunity to remove small quantities of materials in containers above grade to reduce the available and dispersible source term
- Approval authority has decided that due to risks of source term above grade in cell having limited fire mitigation, removal of above grade materials could proceed but would require activity based analysis with controls and DOE approval
- You are the site office manager with approval authority for the facility

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DPO/Employee Concern/Whistleblower Scenario(s)

Scenario

- **Time A:** DOE Employee #1 sends letter to Site Office Manager describing concern on upcoming removal of above grade material. Employee is involved in review of activity bases analysis. Employees believes no activities are allowed since safety basis is non-compliant. Employee submits concern to site office manager.
 - **What actions would you or your office take at this point?**
- **Time B:** DOE Employee #2 (not involved with review of document) sends letter to Site Office Manager—issues are encompassed by Employee #1's issues
 - **What actions would you or your office take at this point?**
- **Time C:** DOE Employee #2 writes letter to GAO with issue
 - **What actions would you or your office take at this point?**
 - **What actions would you avoid?**



Questions and Discussion

QUESTIONS?

